THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 21431 of 2005

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Dated 05.10.2005

Between:

M/s. Madhucon Projects Limited., Jubilee Hills, Hyderabad rep by Director (Finance), Mr. S. Vaikuntanathan

..... PETITIONER

AND

1 The Commercial Tax Officer, Jubilee Hills Circle, Hyderabad and another.

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 21431 of 2005

Oral Order: (Per Sri BRSR,J)

We have heard the learned counsel for the petitioner and the learned Special Standing Counsel for the department.

The petitioner, in the instant writ petition, is challenging the orders passed by the 1st respondent dated 5.3.2005 purporting it to be under Section 7-A of the A.P. General Sales Tax Act, 1957 (for short 'the Act') for the years 2001-02 to 2004-05 as confirmed by the 2nd respondent by his orders dated 31.8.2005.

The main contention urged by the learned counsel for the petitioner is that Section 7-A of the Act under which the penalty is imposed, as against the petitioner, is not applicable even on the admitted facts and therefore, the impugned order suffers from incurable legal infirmities. The learned counsel relied on the affidavit filed by the assessing officer in this Court in the earlier round of litigation where in it is clearly stated that the order passed by him is traceable to Section 5-B of the Act and not Section 7-A of the Act. The learned counsel relying on the affidavit further contends that the provisions of Section 5-B are also not applicable to the facts on hand.

We are not inclined to examine any of these issues in detail in this writ petition since admittedly the petitioner had already preferred a second appeal before the Sales Tax Appellate Tribunal, which is under the consideration of the Tribunal. That any observation from this Court with regard to any of the contentions will cause avoidable prejudice and precisely for that reason, we are not inclined to express any opinion.

There is no dispute whatsoever that the petitioner had already paid the tax and the dispute centers around the penalty. It is brought to our notice that the petitioner had already paid a sum of Rs.49,28,000/- towards the penalty and the same has been accepted by the respondents. Interests of justice would be met by directing the respondents not to take any coercive steps as against the petitioner for realization of the penalty amount subject to the condition of the petitioner depositing a further sum of Rs.1,50,72,000/-(Rupees One Crore Fifty Lakhs Seventy Two Thousand only) in two equal monthly instalments. The first instalment shall be paid on or before 5.11.2005 and the second instalment shall be paid on or before 5.12.2005. Failure to comply with any of these conditions by the petitioner shall result in liberty to the respondents to proceed against the petitioner for recovery of the amount. The respondents are accordingly directed to raise the bank attachment.

The Tribunal is directed to dispose of the appeal as expeditiously as possible.

(B.SUDERSHAN REDDY,J)

dated 05.10.2005

(S.ANANDA REDDY,J)

msv